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HOUSER BROS. CO.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 In re

12 JAMIE LYNN GALLIAN,
13 Debtor.

14
15 HOUSER BROS. CO. DBA RANCHO
DEL REY MOBILE HOME ESTATES,

16 Appellant,
17 v.

18 JAMIE LYNN GALLIAN,
19 Appellee.

Case No. 5:23-cv-00001-DSF

USBC Case No.: 8:21-bk-11710-SC

POST HEARING BRIEF

ORAL ARGUMENT:

Date: October 23, 2023

Time: 1:30 p.m.

Judge: Hon. Dale S. Fischer

20
21 TO THE HONORABLE DALE S. FISCHER, UNITED STATES DISTRICT
22 JUDGE, AND ALL INTERESTED PARTIES

23 Appellant, Houser Bros. Co., dba Rancho Del Rey Mobile Home Estates
24 (“Houser Bros.”), files this post hearing brief (“Brief”) following oral argument on
25 October 23, 2023. At the conclusion of oral argument, the Court announced it’s ruling
26 to reverse and remand the subject order for further factual findings. The Court then
27 requested that each party file a post-hearing brief with suggested language for the
28 order reversing and remanding. Appellant respectfully suggests the following:

1 **1. Pertinent Factual Background**

2 **A. Bankruptcy Case**

3 On July 9, 2021 (“Petition Date”), Jamie Lynn Gallian (“Debtor”) filed a
4 voluntary petition under Chapter 7 of Title 11 of the United States Code, commencing
5 Bankruptcy Case No. 8:21-bk-11710 (“Bankruptcy Case”).¹

6 In Schedule C, Debtor claimed a \$600,000 homestead exemption in a
7 manufactured home located at 16222 Monterey Lane, Space 376, Huntington Beach,
8 CA 92649 (“Property”) pursuant to § 704.730 of the California Code of Civil
9 Procedure (“CCP”).² See Docket No. 72 at 20.

10 On May 12, 2022, as Docket No. 95, Houser Bros. filed a “Motion Objecting to
11 Debtor’s Claimed Homestead Exemption” (“Homestead Motion”). The Motion was
12 set for hearing on June 2, 2022, at 10:30 a.m. Docket No. 99. In the Homestead
13 Motion, Houser Bros. provided evidence to show that Debtor’s single-member LLC,
14 J-Sandcastle Co., LLC (“J-Sandcastle”), was the Property’s owner of record on the
15 Petition Date, and because a debtor’s right to claim an exemption is determined as of
16 the petition date, the Property did not become property of the bankruptcy estate (and
17 therefore Debtor could not be allowed a homestead). *see Owen v. Owen*, 500 U.S. 305
18 (1991) (“Property that is properly exempted under § 522 is (with some exceptions)
19 immunized against liability for prebankruptcy debts. § 522(c). No property can be
20 exempted (and thereby immunized), however, unless it first falls within the
21 bankruptcy estate.”) (emphasis in original); *see also Harrington v. Ainsworth (In re*
22 *Harrington)*, 2005 Bankr.LEXIS 3379, at *8 (B.A.P. 9th Cir. Aug. 22, 2005) (noting
23

24 ¹ Unless noted otherwise, all references in this Motion to docket numbers are to the
25 docket in the Bankruptcy Case.

26 ² California provides two alternative homestead exemptions: the declared homestead
27 exemption set forth in CCP §§ 704.910-704.995, and the automatic homestead
28 exemption set forth in CCP §§ 704.710-704.850. *In re Sain*, 584 B.R. 325, 328
(Bankr. S.D. Cal. 2018). Because declared homesteads apply to voluntary sales, they
generally do not arise in bankruptcy cases. *Id.*

1 that the homestead exemptions set forth in CCP § 704.730(a) depend on whether the
2 debtor is eligible for an exemption as of the petition date); *Goswami v. MTC Distrib.*
3 (*In re Goswami*), 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003) (setting forth the “well-
4 established rule” that the “critical date” for determining exemption rights is the
5 petition date).

6 On June 1, 2022, the day prior to the scheduled hearing, Debtor filed an
7 untimely “Reply Opposition, Memorandum of Points and Authorities to Houser Bros.
8 Co. dba Rancho Del Rey Mobile Home Estates’ Motion Objecting to Debtor’s
9 Claimed Homestead Exemption and Joinder Parties Huntington Beach Gables HOA;
10 Janine Jasso” (“Homestead Opposition”). Docket No. 105.

11 On July 7, 2022, Houser Bros. filed its “Reply to Debtor’s Opposition to
12 Motion Objecting to Claimed Homestead Exemption” (“Homestead Reply”) and
13 related documents. See, Bankruptcy Court Dk. Nos. 130-134.

14 Before the July 21, 2022, hearing, the Court published a tentative ruling to grant
15 the Homestead Motion (“July 21 TR”). In the July 21 TR, the Court found that Debtor
16 had failed to meet her burden that the Property was subject to any exemption. The
17 Court alternatively found that had Debtor provided sufficient evidence of a transfer on
18 February 25, 2021, the limitations of 11 U.S.C. § 522(p) would have applied.

19 On July 21, 2022, at 10:30 a.m., the Court held a continued hearing on the
20 Homestead Motion. During the hearing, the Court orally granted the Homestead
21 Motion for the reasons stated in the July 21 TR. On August 5, 2022 the court entered
22 an order disallowing the claimed exemption (“Order Denying Exemption”).

23 On July 26, 2022, Debtor filed a “Motion for Reconsideration of 7.21.22 Order
24 Sustaining Houser Bros. Co. DBA Rancho Del Rey Mobile Home Estates Objection
25 to Debtor’s Claimed Homestead Exemption and Joinder Parties Huntington Beach
26 Gables HOA; Janine Jasso” (“Reconsideration Motion”). Docket No. 157. The Debtor
27 bore the burden of proof to establish that the cause for the Court to reconsider the
28 Order Denying Exemption.

1 On September 22, 2022, the Court held a hearing on the Reconsideration
2 Motion. At the end of the hearing, the Court took the Reconsideration Motion under
3 advisement.

4 About a week after the September 22, 2022, hearing, Houser Bros. filed a
5 “Notice of Recent Decision Re: Debtor’s Motion for Reconsideration of 7.21.22 Order
6 Sustaining Objection to Debtor’s Claimed Homestead Exemption” (“NRD”). The
7 NRD attached a copy of the decision of the United States District Court for the
8 Northern District of California in *Evander Frank Kane v. Zions Bancorporation, N.A.*,
9 Case No. 21-cv-08209-WHO, which was entered on September 29, 2022. Hays Decl.
10 Ex. 5. The NRD specified as follows:

11 *Kane* is relevant to this case because it involved a claim of exemption in
12 property acquired by an LLC which LLC was owned by an individual
13 debtor. In *Kane*, the Court found that the debtor acquired the subject
14 property from the LLC the day prior to bankruptcy and, as such, limited
15 the exemption under Section 522(p). In this case, the Court has already
16 found that Debtor did not acquire the property from the LLC until after
17 bankruptcy. Under either scenario, the *Kane* decision stands for the
18 proposition that property owned by an LLC cannot be exempted by an
19 individual until she meets her burden of proof to establish a beneficial or
20 equitable interest in such property.

21 Hays Decl. Ex. 5 at 432.

22 On December 19, 2022, the Court entered:

- 23 1) “Memorandum of Decision Regarding Debtor’s Motion for Reconsideration
24 of the Court’s August 5, 2022 Order Sustaining Objection to Debtor’s
25 Homestead Exemption” (“MOD”), Docket No. 273; and
26 2) “Order Granting Debtor’s Motion for Reconsideration of the Court’s August
27 5, 2022 Order Sustaining Objection to Debtor’s Homestead Exemption,”
28 Docket No. 274.

1 In the MOD, the Court held, among other things, that Debtor’s homestead
 2 exemption in the amount of \$600,000 was proper because she had “sufficiently
 3 demonstrated both continuous occupancy of the Property as well as her intent to reside
 4 there.” Docket No. 273 at 11. The MOD did not, however, contain any findings
 5 regarding what was Debtor’s interest in the Property (when it was owned by an LLC
 6 on the petition date and the evidence showed Debtor was a tenant paying rent to the
 7 LLC. The MOD also did not cite to the *Kane* decision that concluded that when a
 8 debtor holds title in an LLC, that interest is insufficient to qualify for a homestead).

9 **B. Appeal**

10 On December 29, 2022, Houser Bros. timely filed a “Notice of Appeal and
 11 Statement of Election.” Docket No. 280.

12 After extensively reviewing the evidence and law, the Court concludes that it
 13 must reverse and remand the subject order.

14 On appeal, a reviewing court reviews findings of fact for clear error. *In re*
 15 *Elliott*, 523 B.R. 188, 191 (9th Cir. BAP 2014)(internal citations omitted). In this case,
 16 however, the trial court failed to make findings on crucial issues.

17 Specifically, before a debtor can exempt an asset, it must first be property of the
 18 bankruptcy estate. *Owen v. Owen*, 500 U.S. 305 (1991). While the trial court correctly
 19 concluded that California law does not require that a debtor must hold title to claim a
 20 homestead exemption, a debtor must still have some equitable or beneficial interest in
 21 a dwelling.³

22 When a debtor in California claims an exemption, the trial court correctly held
 23 that the burden of proof rests upon the party claiming the exemption.

24 Based on the evidence presented by the Debtor (and the record does not have to
 25 be reopened on remand⁴), the Court was required to find facts that satisfied Debtor’s
 26 burden of proof before allowing the claimed exemption.

28 ³ See e.g., *Schaefer v. Blizzard Energy, Inc. (In re Schaefer)*, 623 B.R. 777 (B.A.P. 9th Cir. 2020).

⁴ See generally, *Jones & Laughlin Steel Corp. v. Pfeiffer*, 462 U.S. 523, 551(1983).

1 Instead, the record includes evidence that Debtor's interest in the property was
2 only that of being the sole owner of the limited liability company that held title, that
3 Debtor only held the interest of a month-to-month tenant. If these were interests were
4 the extent of Debtor's interest that became property of the estate, then it would be
5 error to allow debtor a homestead in the property when the property itself did not
6 become property of the estate upon the petition date. Because the trial court's
7 memorandum decision does not address these facts and fails to find facts establishing
8 that Debtor had some equitable interest in the property itself, the order must be
9 reversed for findings of fact to be made.

10 Based on the foregoing, the decision of the Bankruptcy Court is REVERSED
11 and the matter is REMANDED so that the Bankruptcy Court can determine if Debtor
12 satisfied her burden of proof to establish that she had a beneficial interest in the
13 property which became property of the estate which she could then exempt.

14
15
16 DATED: October 30, 2023

MARSHACK HAYS WOOD LLP

17 By: /s/ D. Edward Hays
18 D. EDWARD HAYS
19 BRADFORD N. BARNHARDT
20 LAILA MASUD
21 Attorneys for Appellant
22 HOUSER BROS. CO.
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24
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this District Court proceeding. My business address is: 870 Roosevelt, Irvine, CA 92620.

A true and correct copy of the foregoing document entitled: **POST HEARING BRIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by L.R. 5-4 in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and L.R 5-3.3, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 30, 2023**, I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **October 30, 2023**, I served the following persons and/or entities at the last known addresses in this case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL: Pursuant to F.R.Civ.P. 5 (d)(3) and/or controlling L.R. 5-4, on **October 30, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 30, 2023
Date

Layla Buchanan
Printed Name

/s/ Layla Buchanan
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Bradford Nathan Barnhardt bbarnhardt@marshackhays.com, kfrederick@ecf.courtdrive.com, cbastida@marshackhays.com
- D Edward Hays ehays@marshackhays.com, kfrederick@ecf.courtdrive.com, cmendoza@marshackhays.com, cmendoza@ecf.courtdrive.com, ehays@ecf.courtdrive.com
- Laila Masud lmasud@marshackhays.com, kfrederick@ecf.courtdrive.com, lbuchanan@marshackhays.com, lmasud@ecf.courtdrive.com

2. SERVED BY UNITED STATES MAIL: CONTINUED:

Jamie Lynn Gallian
16222 Monterey Lane Unit 376
Huntington, CA 92649

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL: CONTINUED:

VIA PERSONAL DELIVERY:
MANDATORY CHAMBERS COPY
HONORABLE DALE S. FISCHER, DISTRICT JUDGE
FIRST STREET COURTHOUSE
350 WEST 1ST STREET, COURTROOM 7D
LOS ANGELES, CA 90012